

# **EXHIBIT A**

## **(V of V)**

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1                   she handled candidates for other people who were hiring  
2                   at MBCR?

3                   A.     I have no idea.

4                   Q.     And are you saying that because she was  
5                   referring employees -- referring applicants to Map  
6                   Quest, that was an attempt to force you out of MBCR?

7                   A.     No. I'm saying that by doing that, it  
8                   resulted in many candidates being late or being a  
9                   no-show or lost or they gave up trying to find BET, to  
10                  the point where there were three consecutive no-shows,  
11                  which none of these series of events ever would have  
12                  evolved if it hadn't been for those three no-shows.

13                  Q.     And when Ms. Leaton passed on to Liz Bowden  
14                  the allegations that you were discriminating against  
15                  black applicants, do you believe that Alison Leaton  
16                  believed those allegations to be true?

17                  In other words, when Alison Leaton passed  
18                  on these allegations to Liz Bowden, is it your  
19                  understanding that Alison Leaton thought that you were  
20                  discriminating against black applicants?

21                  A.     I don't know what goes on in her mind. I  
22                  attempted to explain to her that I try to get above  
23                  average candidates. I'm looking for above average  
24                  candidates that meet the job description that can do

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1           this work based on my 28-year career here. What her  
2           interpretation or what her take on it was, I wouldn't  
3           attempt to enter the mind of Alison Leaton.

4           Q.     Okay. So you don't know whether she  
5           believed it or not?

6           A.     I have no idea.

7           Q.     And in terms of your interactions with  
8           Alison Leaton in general, when did you first meet her?

9           A.     Sometime in the late autumn, early winter  
10          of 03.

11          Q.     And was this in connection with hiring  
12          trackmen?

13          A.     Yes.

14          Q.     Did you have any relationship with her  
15          outside of work?

16          A.     No.

17          Q.     And in the course of your employment,  
18          approximately how many times did you have interactions  
19          with Ms. Leaton?

20          A.     On the phone? Or in person?

21          Q.     Either way.

22          A.     Days of interviews or -- I mean, how do you  
23          want --

24          Q.     Approximately how many days out of your

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1 employment were you --

2 A. Interviews in person or on the phone  
3 talking? 15.

4 Q. And this was exclusively around hiring  
5 trackmen?

6 A. Yes.

7 Q. Do you enjoy a good working relationship  
8 with Alison Leaton?

9 A. I'd say decent.

10 Q. Did you have any difficulties with  
11 Ms. Leaton before the issues that surfaced around Marvin  
12 Morgan?

13 A. Not really. I mean, like I said, she was a  
14 bit odd. She really went off on a tangent on this -- on  
15 this presidential primary thing. She was really, really  
16 off, almost on an irrational basis on that. But I can't  
17 say there was any problems.

18 Q. Okay. Did Ms. Leaton ever say anything to  
19 you that was complimentary about your performance as an  
20 MBCR employee?

21 A. Not that I can remember.

22 Q. Did anyone ever tell you that Ms. Leaton  
23 said anything that was complimentary about your  
24 performance as an MBCR employee?

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1           A. Apparently, at some point she was getting  
2 pressure from Liz Bowden who was getting pressure from  
3 City Councilor Chuck Turner about the lack of diversity  
4 in MBCR's work force, the lack of hiring. I'm not quite  
5 sure yet of the time frame there, but apparently they  
6 were under some type of pressure.

7           Q. Apart from the Chuck Turner information, is  
8 there any other reason why you think that Alison Leaton  
9 may have been setting you up?

10          A. Not that I can figure out.

11          Q. Were you saying that she may have been  
12 setting you up because she was for Kerry and not for  
13 Bush?

14          A. How much of a factor that played I don't  
15 know. I can't quantify that.

16          Q. So you don't know whether that played a  
17 role or not?

18          A. I can't prove that.

19          Q. I'm not asking what you can prove. I'm  
20 asking what your belief is.

21          A. It didn't help me. I can tell you that.  
22 It didn't help me.

23          Q. But you don't know whether that played a  
24 role or not?

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1           A. It didn't help me.

2           Q. Okay. I'm not sure what you mean by that.

3           **Do you know whether it played a role --**

4           A. I think it may have played a role in her  
5           deliberations. That's how odd and bizarre and  
6           irrational --

7           Q. **And when you say it may have played a role,**  
8           **why are you saying that? On what basis?**

9           A. Because how else can I explain this  
10          incredible scenario where she's asking me to sort  
11          resumes? And there's a stack of two dozen resumes. And  
12          no comment is made as I'm looking through these resumes  
13          until I put one there, along with -- I'm putting them  
14          all there, as I read it -- and during this time I don't  
15          think I covered -- during all this time, I'm doing the  
16          best I can. I'm reading them with one eye. During this  
17          time I'm blind in my right eye. I think you have  
18          documentation. I had a branch retinal vein occlusion.  
19          A blood vessel burst in my right eye sometime over the  
20          winter.

21           So during this entire time period, I cannot  
22          see anything out of my right eye but a red blotch. The  
23          left eye has always been my weakest eye. I'm trying to  
24          do the best I can going through these resumes. We got

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1 three no-shows consecutive.

2 And as soon as I do this -- as soon as --  
3 the others, nothing was said. As soon as that one was  
4 put there, she yelled, You're putting that one there  
5 because with the name Marvin Morgan from Dorchester, you  
6 think he's a minority. It was absolutely bizarre how  
7 she could make -- that's racist on her part to make that  
8 accusation.

9 Apparently -- the only conclusion I could  
10 draw is she knew it was a minority and this was a  
11 set-up, a plant, whenever scenario you want to say. She  
12 had to have knowledge of that.

13 Q. Okay. You've already -- I mean, again, I  
14 don't want you to repeat things that you've already  
15 testified to. I'm trying to explore new territory.

16 When I'm asking you -- or the question I  
17 was asking you is why you thought it may have been a  
18 set-up. And you indicated that it may have been because  
19 she was in favor of Kerry and you were in favor of Bush.  
20 And the reason for that belief is because you think  
21 otherwise it's just too incredible to have happened. Is  
22 that fair -- is that what your testimony is?

23 A. I thought I already covered that.

24 MR. TEAGUE: Let's go off the record.

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1                   Q. Okay. And, to your knowledge, was Alison  
2 Leaton aware of concerns that were being raised by Chuck  
3 Turner?

4                   A. I have no knowledge of that directly at  
5 this time what the time frame was.

6                   Q. And to your knowledge was Alison Leaton  
7 under any pressure from Liz Bowden to terminate your  
8 employment?

9                   A. I don't know that.

10                  Q. And did Alison Leaton ever lie to your  
11 knowledge other than the lie that you said that when you  
12 called her about the meeting on March 26th?

13                  A. I don't know.

14                  Q. You're not aware of any other lies?

15                  A. I wouldn't trust her either.

16                  Q. No, but I'm asking you if you're aware of  
17 any other lies.

18                  A. No.

19                  Q. Did Ms. Leaton ever do or say anything in  
20 your presence that indicated to you that Ms. Leaton  
21 wanted your employment to end?

22                  A. No.

23                  Q. Did you ever learn that Ms. Leaton ever did  
24 or said anything out of your presence that indicated she

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1                   wanted your employment with MBCR to end?

2                   A.     No.    Only in the context of the March 26th  
3                   meeting, the allegations that were made.

4                   Q.     And are you aware of any reasons that  
5                   Ms. Leaton may have wanted your employment to end?

6                   A.     No.

7                   Q.     And it's your understanding that Ms. Leaton  
8                   was wrongfully claiming that you were screening out  
9                   applicants that she thought may be minority?

10                  A.    I didn't get the front end of that  
11                  question.

12                  Q.    It's your understanding that Ms. Leaton was  
13                  wrongly saying to others that you were screening out  
14                  applicants on racial grounds?

15                  A.    Yes.

16                  Q.    Do you believe that she was lying?

17                  A.    Lying when?

18                  Q.    When she made those statements to Liz  
19                  Bowden.

20                  A.    I don't know.

21                  Q.    Were you screening out minority applicants?

22                  A.    No. I was screening out what I deemed to  
23                  be below average resumes. I like to hire or consider  
24                  above average candidates.

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1           Q. And you had testified before that you  
2 didn't know whether Alison Leaton believed what she was  
3 saying or not. Do you have anything to indicate that  
4 she did not believe what she was saying?

5           A. I think too many double negatives. Can you  
6 repeat that?

7           Q. Yeah, I can try that again. You testified  
8 before that you couldn't sort of read Alison Leaton's  
9 mind and you didn't know whether she believed the  
10 accusations against you or not.

11          My question for you is: Do you have any  
12 reason to think that she knew what she was saying was  
13 not true?

14          A. Well, it's possible. Again, I don't know  
15 what the time frame is. But as Mr. Urban testified,  
16 there's been an ongoing concern from this city  
17 councilor, Chuck Turner. So I don't know how far back  
18 that concern went. So it's in the realm of possibility  
19 it was a concern during this whole period and that she  
20 was aware of it.

21          And, again, who is the responsibility going  
22 to fall to? She's the sole recruiter for six months for  
23 MBCR so who are they going to go to? So with her  
24 contract nearing an end, I guess she figured she'd

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1                   better throw somebody under the bus in hopes to save her  
2                   contract.

3                   Q. And is there anything that makes you think  
4                   that by accusing you of discrimination it was going to  
5                   extend her employment contract?

6                   A. It's reasonable to conclude that that would  
7                   get the heat -- the immediate heat off of her onto  
8                   somebody else. And probably that's all she was  
9                   concerned with at the time.

10                  Q. Do you know?

11                  A. I don't know. But from how it was related  
12                  to me that Turner lambasted Bowden and Bowden came back  
13                  and lambasted Leaton, so you can draw -- any reasonable  
14                  mind could draw their own conclusions from that.

15                  Q. And you don't know who told you that?

16                  A. I can't remember.

17                  Q. So you don't know whether Chuck Turner  
18                  lambasted Bowden?

19                  A. Well, I think a reasonable person can.  
20                  connect the dots.

21                  Q. I'm asking you what you know.

22                  A. I know that even Steve Urban, one of the  
23                  defendants, testified that there was ongoing concerns  
24                  with Chuck Turner's office with the lack of diversity

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1 hiring.

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2 Q. No. But my question -- my question for you  
3 is: To your knowledge -- your knowledge -- did Chuck  
4 Turner lambaste Elizabeth Bowden?

5 A. I believe he did.

6 (Attorney and client confer.)

7 A. I don't -- it's based on information  
8 related to me by somebody who had no reason to lie. But  
9 do I have personal knowledge?

10 Q. That's my question.

11 A. But I also -- actually, I do have personal  
12 knowledge. I've read in the newspaper -- there's been  
13 articles in the Boston newspapers where City Counselor  
14 Chuck Turner has been quite critical of MBCR's hiring  
15 practice.

16 Q. Okay. But my question for you was: To  
17 your knowledge, your personal knowledge, did he lambaste  
18 Elizabeth Bowden in particular?

19 A. Not that I have witnessed, no.

20 Q. And to your personal knowledge, did  
21 Elizabeth Bowden lambaste Alison Leaton?

22 A. I understand that's what happened, but I  
23 did not personally witness that.

24 Q. Okay. And your understanding is based on

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this unknown person that you can't identify?

2

A. Almost two -- a year and a half, two years later, I can't remember who told me. But at the time the person who told me I considered reliable and had no reason to lie to me.

6

Q. Did you ever hear any criticism of Alison Leaton's performance as an MBCR recruiter?

8

A. Yes.

9

Q. By how many people?

10

A. At least three. Probably more -- more than that.

12

Q. And who are the three people that criticized Alison Leaton's performance to you?

14

A. Harold Hoffman, as I, again, testified earlier, said he'd be willing to appear as a witness. He had some type of argument with her and allegedly Alison Leaton turned in, quote, unquote Harold to two people that I'm unaware of for -- the circumstances I'm unaware of. But there was some kind of argument, disagreement concerning the hiring process between those two.

22

Q. Anybody else?

23

A. Let's see. Yes. On the witness list -- not MBCR but Susanne Allen is the head of Amtrak HR and

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1 may have been motivated to extend her contract in  
2 raising these allegations against you, what makes you  
3 think that her raising these allegations against you  
4 might have extended her contract?

5 A. I don't know. Perhaps -- perhaps they  
6 would -- she would be seen as the white knight who threw  
7 me under the bus and got another contract extension. I  
8 don't know.

9 Q. Okay. Do you have any reason to conclude  
10 that Alison Leaton's role in all this was based on  
11 anything other than her belief that you were  
12 discriminating?

13 A. One more time, please?

14 Q. Do you have any reason to conclude that  
15 Alison Leaton's role in the events that led up to your  
16 termination was based on anything other than a belief on  
17 her part that you were discriminating?

18 A. Yes.

19 Q. And is that the information that you  
20 previously testified to?

21 A. Yes.

22 Q. Or is there anything else?

23 A. No. What I've already said about it.

24 Q. To your knowledge, did Alison Leaton tell

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1                   Q. Okay. Looking at what has been marked as  
2 Deposition Exhibit 11, I would like to go through it and  
3 find out which of these statements you agree occurred,  
4 which of them you disagree with, which you can't recall.

5                   So I'd like to go through it. It deals  
6 with the March 26th meeting. And I'd like to start at  
7 page one. And the second paragraph starting with,  
8 Meeting held March 26th at 1:30. In that paragraph it  
9 refers to the time, the place, and the people who were  
10 there. To your knowledge, is that a correct statement  
11 of the time, place, and the participants?

12                  A. Yes.

13                  Q. Moving to the next paragraph, it says,  
14 Statement from E. Bowden indicating that MBCR is an  
15 equal opportunity employer is indicated in the policy  
16 signed by our general manager in August 2003. The  
17 reason for the meeting is a report by the recruiter,  
18 Alison Leaton, that Eli Mistovich was eliminating  
19 qualified applicants because of their name and their  
20 home address as is indicated on their resume under the  
21 assumption that they were black.

22                  Do you recall Elizabeth Bowden making a  
23 statement to this effect?

24                  MR. TEAGUE: Note my objection. There's no

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1 identification of this document. He didn't prepare it.

2 MS. RUBIN: I'm not asking -- I'm asking  
3 whether he recalls that happening. I'm not asking what

4 --

5 MR. TEAGUE: I'm just noting my objection.

6 I'm not going to argue with you. It's inappropriate to  
7 stick an unidentified document and ask him questions  
8 about it. You can answer it as best you can.

9 A. I don't recall that. She might have said  
10 that, but I don't recall.

11 Q. Okay. Moving to the next paragraph, it  
12 says, As a result of interviews conducted on March 4th  
13 and 5th, 2004, there was need to consider additional  
14 applicants for the open trackman position.

15 During a meeting on March 5th between Eli  
16 and Alison, a qualified resume previously accepted by  
17 Alison and passed over by Eli was presented for  
18 consideration. It was at this point that Eli indicated  
19 that he did not want to interview this person as he had  
20 trouble with people like that in the past.

21 Do you recall Elizabeth Bowden or anybody  
22 or anybody in this meeting making a comment to you to  
23 that effect?

24 A. Yes.

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1                   Q. And then it goes on to say, When asked  
2                   about this on March 26th by E. Bowden, his first  
3                   response was that was true, and he had records to  
4                   validate his statement.

5                   Is that a correct paragraph?

6                   A. That's true.

7                   Q. So your first response to Elizabeth Bowden  
8                   was it was true and you had records to validate your  
9                   statement that you had trouble with people like that in  
10                  the past?

11                  A. That's correct. But it didn't address  
12                  their race. It was candidates either above average or  
13                  below average. The resume was below average for the  
14                  requirements of the position. That's what I base it  
15                  on. I couldn't tell what the guy's race was. It was a  
16                  below average resume.

17                  Q. So you do recall telling Ms. Bowden and the  
18                  others that you had problems with people like that in  
19                  the past. But you were referring to people who had  
20                  below average resumes?

21                  A. Correct. Below average resumes,  
22                  qualifications, job experience. This candidate that was  
23                  being discussed didn't have any construction laborer  
24                  experience, which was a prerequisite, didn't have a

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1 hoisting license.

2                   The job -- the position -- the  
3 advertisement said able to lift, bend, carry heavy  
4 loads. Hadn't any indication of that. Didn't have any  
5 railroad experience. There was a gap in his resume from  
6 2002. That was his last job. There was a gap. There  
7 was a few things that didn't look like this was an above  
8 average candidate to me.

9                   Q. The next paragraph, it says, When  
10 challenged on this, Eli indicated he had lots of  
11 experience in selecting applicants. And his goal was to  
12 select the best or above average candidates. Eli  
13 appeared put out as he outlined that his comments to the  
14 recruiter he thought were -- were he thought in  
15 confidence.

16                   Do you recall that paragraph? Do you  
17 recall the events in that paragraph?

18                   A. Yes.

19                   Q. Is that a true characterization of what  
20 happened at the meeting?

21                   A. Yeah, but, again, the context -- you're  
22 insinuations here are drifting the wrong way. I was  
23 trying to select above average applicants because when I  
24 don't, I end up with problems down the road. I've had

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1 qualified applicants to fill the approved requisition.  
2 So the discussion on March 5th was to identify other  
3 potential applicants, altogether approximately 15 people  
4 we interviewed, one or two minority candidates.

5 Do you recall giving that response at any  
6 point?

7 A. Yes.

8 Q. And is that accurate, to your knowledge?

9 A. Yes.

10 Q. Questions three, We have been advised that  
11 you would not interview certain applicants because of  
12 their name and their address. The discussion was that  
13 you assumed that they were black or minority. What is  
14 your response to this?

15 Do you remember being asked that question?

16 A. I can't remember exactly. But I remember  
17 Bowden making allegations. So, yes, I do remember words  
18 to that effect.

19 Q. And then it goes on to say, I always select  
20 the best or above average candidates.

21 Do you recall making that response --

22 A. Yes.

23 Q. -- to her -- well, let me finish the  
24 sentence. Do you recall making that response in terms

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1                   of her asking you whether or not you were not  
2                   interviewing minority candidates?

3                   A.     No.

4                   Q.     So you don't recall the answer to that  
5                   question?

6                   A.     I don't remember being questioned about was  
7                   I not interviewing minority candidates. I don't  
8                   remember that question.

9                   Q.     But you remember saying at some point that  
10                  you select the best or above average candidates?

11                  A.     Yes.

12                  Q.     But you don't remember what that was in  
13                  response to?

14                  A.     No.

15                  Q.     And then it goes on to say, This was not  
16                  challenged. The point of who got selected for  
17                  interviews was.

18                  And then it says, Eli would not respond  
19                  beyond this comment.

20                  Do you recall any statement from Liz Bowden  
21                  or anybody else to the effect of they were trying to  
22                  understand your selection process in terms of  
23                  minorities?

24                  A.     I'm sorry. The question was --

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1           Q. In terms of this paragraph, this was not  
2 challenged, is that an accurate representation of what  
3 you recall happening at the meeting?

4           A. Yes.

5           Q. Okay. So you recall that someone telling  
6 you the point was who got selected for interviews and  
7 that you did not respond beyond that comment?

8           A. I remember being in a daze.

9           MR. TEAGUE: This refers to, I always  
10 select the best or above average?

11           MS. RUBIN: Right. That's right.

12           MR. TEAGUE: This was not challenged?

13           MS. RUBIN: Right.

14           MR. TEAGUE: I'm losing you.

15           Q. What I'm asking is, where it says, Eli  
16 would not respond beyond the comment of, I always select  
17 the best or above average candidates, is it your memory  
18 that you gave no other response beyond I always select  
19 the best or above average candidates?

20           A. I can't remember anything else. I was in a  
21 daze with that medication. I was shocked that I was  
22 being asked these questions.

23           Q. So you can't recall?

24           A. No.

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1                   Q. All right. Then it says, As Eli was not  
2 providing any information, E. Bowden stated that absent  
3 a comment from Eli, the information from the recruiter  
4 was considered accurate and without objection.

5                   Do you recall Elizabeth Bowden making a  
6 comment to that effect?

7                   A. Yes.

8                   Q. And then it says, Eli stated, It sounds  
9 like you've already made up your mind.

10                  Do you recall making that statement in  
11 response?

12                  A. Vaguely, yeah, I think I did make that.  
13 Yeah.

14                  Q. And then it says, E. Bowden restated that  
15 no conclusions have been formed. That is the purpose of  
16 this meeting. Do you recall her making any statement to  
17 that effect?

18                  A. No, I don't remember that part of it. But,  
19 again, it seems to me that I was being set up. And even  
20 in that impaired state, I could figure out that they had  
21 already made up their mind and this was a done deal,  
22 pretty much.

23                  Q. Okay. Again, I'm not -- we've already  
24 covered -- I don't want to go back in time to what

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1           glean who's going to be an above average candidate.

2           That particular candidate did not meet many of the  
3           requirements.

4           Q. Again, I'm only focusing on what you  
5           communicated at this meeting, all right, and what was  
6           communicated to you, not other facts. We are just  
7           focusing on the meeting on March 26th.

8                   So in terms of what's listed here as  
9           question number four, you recall being asked about a  
10           certain applicant and not interviewing that applicant  
11           because of their name and address? That's correct?

12           A. I was questioned on that.

13           Q. That's right.

14           A. Yes.

15           Q. And in terms of the question that is worded  
16           here, it gives the response that Alison Leaton had  
17           reported that you had problems with people like that.

18                   Do you recall being asked about that  
19           statement that Alison Leaton said that you had given  
20           her?

21           A. Yeah. I think Bowden did ask me about  
22           that.

23           Q. And she asked you what did you mean?

24           A. Yes.

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1                   Q. And then it says, No further comments be  
2                   added after the original statement indicating had he, in  
3                   fact, had problems. Is that an accurate representation  
4                   of what happened at this meeting?

5                   A. Again, in the prior one, it seemed like  
6                   they had their mind made up.

7                   Q. I'm not asking you what you thought. I'm  
8                   asking you if this is an accurate representation of what  
9                   happened at this meeting.

10                  A. I'm sitting there in a daze, unable to  
11                  comment. I'm speechless at this point.

12                  Q. So it is a correct representation that no  
13                  further comment was added on your part?

14                  A. Correct.

15                  Q. Then it says, Eli stated that during the  
16                  hiring requirements at his previous employer he always  
17                  exceeded the required numbers.

18                  Do you recall making a statement to that  
19                  effect?

20                  A. Yes.

21                  Q. And then it says in parentheses, This  
22                  cannot be validated by MBCR. Was this something that  
23                  was said to you at this meeting?

24                  A. What was that?

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1 conversation about benefits. I remember -- I do  
2 remember that.

3 Q. Okay. And the other things that are  
4 written here you don't recall?

5 A. I can't remember exactly.

6 Q. Okay. And then it ends with, At no point  
7 did Eli indicate that he was not biased in his hiring  
8 practices and did not deny the overall circumstances of  
9 the meeting and its content. When pressed on the  
10 issues, he opted to say nothing.

11 Is that an accurate characterization of  
12 what happened at this meeting?

13 A. No. That's Ms. Bowden's interpretation.  
14 I'm sitting there in a daze.

15 MR. TEAGUE: Just --

16 A. No.

17 Q. So you disagree with that?

18 A. Yeah, I disagree with that.

19 Q. Did at some point you indicate that you  
20 were not biased?

21 A. All I can recall is saying I try to hire  
22 above average -- I select above average resumes,  
23 candidates, interviews. I try to get above average  
24 candidates. That's it.

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1                   Q. So you don't recall making any statement  
2 about not being biased in your hiring practices other  
3 than saying you hire above average candidates or the  
4 best candidates?

5                   A. That's all I can recall. I can't remember  
6 the exact -- as that paragraph is written, I don't know  
7 if that was or was not.

8                   Q. We've just gone through four pages of  
9 Exhibit No. 11, Bates stamped 9 through 12, of someone's  
10 notes about the meeting on March 26th. Apart from the  
11 information that we've just gone through, is there  
12 anything else that happened on March 26 -- that March  
13 26th meeting that we haven't gone through that you  
14 recall that's not in these notes?

15                  A. I can't remember.

16                  Q. Then there was the termination meeting.

17                  And that was the March 30th meeting; is that correct?

18                  A. Yes.

19                  Q. And you understood at that meeting that you  
20 are being terminated or being told that you were  
21 terminated because MBCR concluded that you were  
22 discriminating against minority applicants; is that  
23 correct?

24                  A. I didn't know that as I walked in the

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1 Q. And at the time that you reviewed it, was  
2 everything true and accurate?

3                   A. I believe so. There were a few typos and a  
4 few words that I corrected. But I did review it and  
5 make a few minor -- mostly typos.

6 Q. Okay. So to your knowledge before it was  
7 filed those were corrected and the complaint accurately  
8 represented your beliefs and knowledge about incidents  
9 relating to your termination?

10 A. Yes.

11 Q. If you turn to paragraph 24 on page  
12 seven -- or first if you go up one paragraph to  
13 paragraph 23, that refers to the termination meeting on  
14 March 30th?

15 A. Yes.

16 Q. And then it goes on to say in paragraph 24,  
17 Plaintiff then inquired as to why he was being fired.  
18 Defendant Nevero replied that it was based on the fact  
19 that plaintiff had discriminated in his screening of  
20 candidate's resumes based on geography.

21 Plaintiff was informed by Nevero that  
22 plaintiff had the opportunity at the previous Friday  
23 meeting to set the record straight but had failed to do  
24 so. Defendant Bowden then stated that there was also an

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issue concerning female candidates. No explanation was provided to plaintiff as to what this issue was.

As you sit here today, do you recall Nevero  
or Ms. Bowden making those comments?

5 A. Yes.

6 Q. And that's an accurate statement of what  
7 happened at the meeting?

8 A. Yes.

9                   Q.     When Steve Urban assisted you after the  
10                  meeting in clearing out your records and your office and  
11                  the automobile, did you and he discuss anything during  
12                  that time?

13                           A. Not really. I was kind of shocked and  
14                           upset.

Q. Did you discuss your termination at all?

16 A. No, I don't think so.

17 MS. RUBIN: Let's go off the record.

18 (Discussion off the record.)

19 Q. Okay. Mr. Mistovich, I'd like to sort of  
20 just go back to hiring in general. During your  
21 employment with MBCR, did you have training on anti-  
22 discrimination principles?

23 A. Yes.

Q. And did you also have training on that at

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1 practices at MBCR?

2 A. Not that I can recall.

3 Q. In terms of the hiring -- need for hiring  
4 trackmen at MBCR, when did that hiring process begin?

5 A. I think I alluded to earlier, late fall  
6 early winter of 03.

7 Q. Of 03. And what was your role in the  
8 hiring process? Could you walk me through the steps?

9 A. Well, we had been trying to get people  
10 hired without success. And when authorization finally  
11 came, I was told that Alison Leaton -- this individual  
12 named Alison Leaton would be the recruiter, and I'd be  
13 dealing with her.

14 And so I contacted her, and we started the  
15 process. I recall I sent her all the resumes I had. I  
16 think 60 was the first batch. And I guess that was 60  
17 resumes. And at some point she got back to me and she  
18 was rather irate saying, We only have four -- four or  
19 six vacancies, and 60 is way too many resumes for that  
20 amount. And I'm working by myself. I can't process  
21 that many. And I certainly can't interview. So you  
22 need to edit that down to 10 or 15 resumes.

23 Q. And this was in the fall of 2003?

24 A. It's an ongoing process. It started in the

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1 fall -- in the late fall into the wintertime.

2 Q. You initially did some interviewing based  
3 on a posting in October 2003; is that correct?

4 A. I think we did -- the first one was for  
5 four, and I believe we filled two, if my memory serves  
6 me. We filled two. So we hired two and still had two  
7 vacancies.

8 MS. RUBIN: I'd like to have this marked as  
9 the next exhibit?

10 (Exhibit. No. 18 position description  
11 marked.)

12 Q. I'm handing you what has been marked as  
13 Deposition Exhibit 18. Do you recognize that document?

14 A. Yes. It's a position description for a  
15 trackman.

16 Q. And is that the position that was posted in  
17 October of 2003?

18 A. Yes.

19 Q. And did you play any role in getting that  
20 position posted?

21 A. As far as a position description? Or as  
22 far as to fill vacancies?

23 Q. To fill vacancies.

24 A. Yes.

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1 Q. And what role was that?

2 A. As I testified earlier, there had been a  
3 freeze on hiring in the last year and a half with  
4 Amtrak. And then MBCR didn't hire anybody. As I  
5 previously testified, in August of 03 we had a snow  
6 meeting. I explained to Mr. Nevero we wouldn't have  
7 enough people to do snow duty. Nothing happened. I  
8 followed up with a memo in late September.

9 Q. And when you say you followed up with a  
10 memo in late September, are you referring to Deposition  
11 Exhibit No. 1?

12 A. Yes.

13 Q. Okay. That was a memo that you gave  
14 Mr. Nevero?

15 A. Yes.

16 Q. And then what happened?

17 A. And some time went by. And then there was  
18 an authorization for four trackmen.

19 Q. And this was in the fall of 2003?

20 A. Yes.

21 Q. And then you interviewed how many  
22 candidates?

23 A. I can't even remember.

24 Q. Was that with Alison Leaton?

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1 A. Yes.

2 Q. And you're saying you filled two of the  
3 positions?

4 A. Yeah. I seem to recall we filled two, and  
5 there were two vacancies.

6 MS. RUBIN: I'd like to have this marked as  
7 the next exhibit.

8 (Exhibit No. 19 interview schedule marked.)

9 Q. I'm handing you what's been marked as  
10 Deposition Exhibit 19. Do you recognize this?

11 A. Yes.

12 Q. What is it?

13 A. It looks like it's -- Alison Leaton would  
14 put out an interview schedule of the candidates for a  
15 particular day. This looks like the two days -- we had  
16 two days of interviews lined up and the candidates  
17 scheduled for certain times.

18 Q. And were these the candidates that you did,  
19 in fact, interview on October 24th and 25th, 2003?

20 A. Yeah. I can't remember exactly, but the  
21 names look familiar.

22 Q. Okay. And it says, Christen Clark and Gary  
23 Collin were both hired. Is that a correct statement?

24 A. Correct.

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1 Q. And those were the two people that you said  
2 were hired?

3 A. Yes.

4 Q. You were trying to hire for four people; is  
5 that correct?

6 A. Correct.

7 Q. And so you didn't have enough qualified  
8 applicants for the other two positions?

9 A. I can't remember exactly. We would have  
10 liked to, but apparently we didn't have what we felt  
11 were above average candidates for whatever reason --  
12 no-shows or they withdrew or -- I don't know. It could  
13 be anything.

14 Q. And all of the candidates that you  
15 interviewed that day, what were their races?

16 A. I can't tell looking at the names.

17 Q. Do you recall whether any of those  
18 applicants were minorities?

19 A. I can't recall. It's two years ago --  
20 almost two years ago. I don't remember.

21 Q. And do you recall what happened next in the  
22 hiring process since you still needed to hire some  
23 additional trackmen?

24 A. Well, probably the next thing that happened

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1                   was the snowstorm of December 6th and 7th. It was a  
2                   complete disaster. And apparently that series of events  
3                   motivated MBCR to authorize additional people to be  
4                   hired.

5                   **Q. And so how many additional people were**  
6                   **authorized?**

7                   A. I recall four to the original four making a  
8                   total of eight total authorized. We already had two so  
9                   there were six vacancies.

10                  **Q. And so was the job reposted?**

11                  A. I can't remember whether it was reposted or  
12                  -- yeah, I don't remember.

13                  (Exhibit No. 20 list marked.)

14                  **Q. Handing you what's been marked as**  
15                  **Deposition Exhibit No. 20, do you recognize it?**

16                  A. Yes.

17                  **Q. What is it?**

18                  A. It looks like a list that looks like my  
19                  printing, a revised list of track resumes dated February  
20                  9th of 04.

21                  **Q. So these were people that you were trying**  
22                  **to hire in 2004 or you were considering hiring?**

23                  A. Yes. They were candidates -- what I think  
24                  this is is the original 60 resumes that I had sent to

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1           Q.     But when Alison Leaton had the discussion  
2         with you about Marvin Morgan and handed you his resume,  
3         was there anybody else present in the room?

4           A.     There might have been. I can't remember if  
5         there was or not.

6           Q.     Okay. And where were you meeting when you  
7         met with Alison Leaton?

8           A.     Where we were doing the interviews in the  
9         -- we had a conference room at BET upstairs.

10          Q.     And after Alison Leaton handed -- well, you  
11         were going through -- she told you or you both discussed  
12         that you needed to hire some additional people or  
13         interview additional people?

14          A.     Correct.

15          Q.     And there were the stack of rejected  
16         resumes that you were looking through to see if there  
17         was anybody else from there that you originally --

18          A.     I don't know that they were rejected. I  
19         didn't know if they were new, recycled. I didn't know  
20         what they're -- all I knew is she had then a stack of  
21         resumes.

22          Q.     They asked you to look through?

23          A.     And she handed them across the table. And  
24         there was a pile in front of me. And I started looking

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1 through them.

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2 Q. And do you recall approximately how many  
3 resumes were in the pile?

4 A. I'm going to say one to two dozen. I don't  
5 know. 12 to 24. I don't know.

6 Q. Do you recall?

7 A. No. I don't know. There was a small stack  
8 of them.

9 Q. Okay. And Marvin Morgan's resume was in  
10 that stack?

11 A. Yes.

12 Q. And after you -- as you say, you were  
13 looking through the resumes and putting them in a pile  
14 of those that you were rejecting?

15 A. My recollection -- here's the pile of  
16 resumes. As I would look through each one, I'd put them  
17 right here like this.

18 Q. Indicating yes or no or indicating  
19 anything?

20 A. Again, I was just looking through them.

21 Q. And as you put Marvin's --

22 MS. RUBIN: The witness -- let the record  
23 reflect that the witness is just indicating that he  
24 picked up the document and put it in another pile.

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1           Q.   Do you recall her telling you that what you  
2           were doing was against the law?

3           A.   No.

4           Q.   And when you say you don't recall, she may  
5           have said it but you just can't remember?

6           A.   I don't remember that being said.

7           Q.   Okay. Do you recall her saying something  
8           to the effect of that she wasn't going to make you hire  
9           a minority or a person who wasn't qualified; but if they  
10          were, she would go to the mat for that person?

11          A.   I don't -- I remember vaguely she did say  
12          something like that. But I can't remember what was the  
13          exact --

14          Q.   What is it that you vaguely recall her  
15          saying?

16          A.   I can recall her remember saying, you know,  
17          I'm not going to make you hire a minority if they're not  
18          qualified. But if they are qualified, I want you to  
19          hire them. Words to that effect.

20          Q.   And then did you tell her there was no  
21          point in arguing with her because you weren't going to  
22          win?

23          A.   I can't recall.

24          Q.   And did you have the impression in this

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1 meeting that Alison Leaton wanted to interview Marvin  
2 Morgan?

3 A. By the conclusion, I handed back resumes  
4 with the assumption she was going to process them. His  
5 was in that pile to be processed. So my conclusion -- I  
6 assumed he was going to be set up for an interview.

7 Q. And it was your understanding that she was  
8 telling you that she thought you should interview him;  
9 is that correct?

10 A. She felt he was a qualified candidate.

11 Q. And in your opinion, he did not have the  
12 qualifications that other people had; is that correct?

13 A. I thought he was below average in his  
14 qualifications.

15 Q. And so if she hadn't suggested that you  
16 interview him, you would not have interviewed him; is  
17 that correct?

18 A. I don't know.

19 Q. And what made his qualifications any  
20 different from the qualifications of James P.  
21 Fitzgerald, which is the last resume in Exhibit 21?

22 A. Well, this guy is driving a dumpster. This  
23 guy is an assistant manager of an \$11 million business.  
24 He's done hiring, training, scheduling cashiers. This

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guess. It's a meaningless question. I don't understand  
it.

3 Q. All right. Let me rephrase it. If  
4 Ms. Leaton had drawn some conclusions based on addresses  
5 of where applicants lived whether she thought they were  
6 white, black, or whatever race, are you saying that  
7 there's no -- that that would be an unreasonable thing  
8 for her to do?

9                   A.     If Ms. Leaton did that, that would be  
10                  racism, what she was accusing me of doing.

11 Q. But would it be something that it would be  
12 impossible for someone to try to figure out, based on  
13 where someone lived what their race may be?

14                           A.     Yeah. I don't see how that's -- how you  
15 can do it.

16 Q. So regardless of where anybody's address  
17 is, you wouldn't be able -- I understand you might not  
18 know for sure what their race is. But you might be able  
19 to guess what their race might be. Is that correct?

A. No. You can't tell.

21 Q. Okay. So you wouldn't be able to -- say  
22 somebody lived in Mattapan, be able to guess that  
23 perhaps they may be black?

24 A. No.

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1           Q. You think there's equal likelihood that  
2         they may be white?

3           A. Tom Finneran lives in Mattapan.

4           Q. No. I understand that.

5           A. Kevin Lydon lives in Dorchester. How could  
6         you tell?

7           Q. Well, you don't know for sure, do you?

8           A. No.

9           Q. But you might be able to guess based on --

10           MR. TEAGUE: You've asked him this four  
11         times, and he's said, No. So let's move on. It's asked  
12         and answered.

13           Q. I just want to make sure I'm clear.

14           MR. TEAGUE: You can ask him one more time,  
15         and give her the answer. And that's it.

16           Q. In your opinion, it is not reasonable to  
17         make guesses about -- no one could make a reasonable  
18         inference about what somebody's race is based on where  
19         they live?

20           A. That's correct.

21           Q. I'm handing you what has been previously  
22         marked as Deposition Exhibit 8. What is that?

23           A. It looks like another list of resumes.

24         It's entitled, New resumes. New resumes, dated January